

December 16, 2022

ATTACHMENT TO NOTICE OF EXEMPTION

Emergency Action to
Re-adopt the Addition of Section 749.13 to
Title 14, California Code of Regulations
Incidental Take of Southern California Steelhead

At its April 21, 2022, meeting, the California Fish and Game Commission (Commission) determined that listing southern California steelhead as endangered under the California Endangered Species Act (CESA) may be warranted pursuant to California Fish and Game Code Section 2074.2. SCS is a candidate species under CESA. Candidate species are protected under CESA pursuant to California Fish and Game Code Sections 2080 and 2085. Fish and Game Code Section 2084 permits the Commission to authorize, subject to terms and conditions it prescribes, and based on the best available scientific information, the take of any candidate species, "provided that...the take is consistent with" CESA. Also at its April 21, 2022, meeting, the Commission adopted the addition of Section 749.13 to Title 14 of the California Code of Regulations, Emergency Regulation Relating to Take of Southern California Steelhead (*Oncorhynchus mykiss*) During Candidacy Period, through emergency authority. At its October 13, 2022 meeting, the Commission re-adopted that addition through an emergency rulemaking.

At its December 14-15, 2022 meeting, the Commission re-adopted for a second time the regulation through an emergency rulemaking action that, if approved and filed by the Office of Administrative Law, will extend this addition of Section 749.13 to Title 14 of the California Code of Regulations. Based on the Commission's record for the emergency rulemaking action, the Commission determined that its adoption of the regulation pursuant to Section 2084 of the Fish and Game Code is exempt from the California Environmental Quality Act (CEQA) as an action necessary to prevent or mitigate an emergency as specified in Public Resources Code Section 21080(b)(4) and Title 14 CEQA Guidelines Section 15269(c).

The adopted emergency regulation will allow for three categories of projects to continue. First, delays or stoppages for projects or activities that relate to flood control and provide flood protection necessary to prevent flood damage to communities or infrastructure that would likely occur because southern California steelhead CESA protections would jeopardize that flood protection. Second, delays or stoppages for projects or activities that relate to highways and provide public-safety benefits through highway maintenance or improvements that would likely occur because southern California steelhead CESA protections would jeopardize those public-safety benefits. Third, delays or stoppages for projects or activities related to the diversion, impoundment, or discharge of water that provide water supply or water treatment for essential domestic, agricultural, industrial, or commercial uses that would likely occur because southern California steelhead CESA protections would jeopardize those water supply or water treatment public benefits. Regarding projects or activities that provide water supply, on March 28, 2022, Governor Newsom ordered through Executive Order N-7-22 that the previously proclaimed states of emergency due to extreme and expanding drought conditions that exist across all the counties of California shall remain in full force and effect.